



**IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE**

In re the Application of:  
Inventor(s): Thomas Happe  
Serial No.: 10/077,699  
Filed: 2/15/02  
Title: Hydrogen Production  
Docket No.: 01MEL1

Examiner: Yong D. Pak  
GAU: 1652

May 20, 2004  
Santa Barbara, California

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF APPLICANT UNDER 37 CFR § 1.131**

I, Thomas Happe, am the sole inventor and applicant of the above-captioned invention and patent application.

This Declaration is being submitted in response to the office action mailed 5/14/2004 regarding the date of the present invention, confirming the dates presented to the Examiner by Dr. Michael G. Petit in the Amendment and Response dated February 17, 2004. The chronology of events related to first inventorship are as follows.

On July 24, 2000, L. J. Mets submitted (to GenBank) a nucleotide sequence for DNA encoding a hydrogenase that is identical to SEQ ID NO: 5 of the present application. The Mets submission to GenBank was entered under Accession Number AF289201. A copy of the Mets submission showing the 7/24/00 submission date was filed with the Amendment A and a duplicate copy is enclosed herewith. I, the present inventor, was the first to submit SEQ ID NO. 5

to GenBank. In fact, the sequence of the present invention, designated SEQ ID NO. 5, was submitted to GenBank by me on October 15, 1998, under Accession No. AJ012098. At my request, the sequence data (SEQ ID NO. 5) was kept confidential by the EMBL until November 12, 2001.

The present application claims the priority of an earlier provisional application Serial No. 60/269,872, filed 2/16/01. The present inventor's submission to GenBank preceded the submission of Mets by nearly 2 years (21 months). My provisional application was filed prior to the public disclosure of SEQ ID NO. 5 by GenBank. GenBank has no mechanism for preventing submission of duplicate, redundant or even copied sequences. Accordingly, inasmuch as my submission date predates the Mets submission by 21 months, I am the first inventor of SEQ ID NO. 5.

I declare under penalty of perjury under Federal law that the foregoing is true and correct and that all statements made on information and belief are believed to be true; and further with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both under section 1001 of Title 18 of the U.S. Code, and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Executed this 31 day of May, 2004, at Bodua.

5/31/2004

Date

Thomas Happe

Thomas Happe, Inventor and Applicant